IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

OurPet's Company, *Plaintiff,* *v.* **Loving Pets, Corp.,** *Defendant.*	Case No. 1:15-cv-768 Judge Polster **REPORT OF PARTIES' PLANNING MEETING UNDER FED. R. CIV. P. 26(f), L.R. 16.3(b)(3) and LPR 2.1**

1. Pursuant to Fed. R. Civ. P. 26(f) and L.R. 16.3 (b)(3) and LPR 2.1, a meeting was held on Aug. 18, 2015, and was attended by:

- David Welling, Counsel for Plaintiff.
- James Kwak, Counsel for Defendant.
- Frank Carroll, Counsel for Defendant.

2. The parties do not consent to the jurisdiction of the United States Magistrate Judge pursuant to 28 USC 636(c).

3. a. Proposed Schedule:

Event	Due Date
Exchange of initial disclosures [FRCP 26]	Aug. 17, 2015
Plaintiff to serve infringement contentions and accompanying document production [LPR 3.1, 3.2] (15 days from responsive pleading)	July 23, 2015
Defendant to serve non-infringement contentions and accompanying document production [LPR 3.3, 3.4] (30 days later)	September 1, 2015
Defendant to serve invalidity and unenforceability contentions and accompanying document production [LPR 3.5, 3.6] (80 days from responsive pleading)	Oct. 13, 2015

Event	Due Date
Exchange of initial claim terms for construction [LPR 4.1(a)] (95 days from responsive pleading)	Oct. 26, 2015
Plaintiff to serve validity and enforceability contentions [LPR 3.7] (20 days from invalidity / unenforceability contentions)	Nov. 2, 2015
Exchange of final claim terms for construction [LPR 4.1(c)] (115 days from responsive pleading)	Nov. 16, 2015
Exchange of proposed constructions and supporting evidence [LPR 4.2(a), (b)] (15 days from claim terms identification)	December 1, 2015
Disclosure of claim construction(s) expert and report(s), if any [LPR 4.3(a)] (15 days from preliminary claim constructions)	Dec. 16, 2015
Disclosure of rebuttal claim construction expert(s) and report(s), if any [LPR 4.3(b)] (15 days from claim construction experts)	Dec. 31, 2015
Last day to complete expert claim construction depositions [LPR 4.3(c)] (15 days from rebuttal experts)	Jan. 15, 2016
Exchange of final claim constructions [LPR 4.2(c)] (5 days from claim construction discovery) or 50 days after exchange of Preliminary Claim Constructions pursuant to LPR 4.2 (b) if no expert is identified.	Jan. 20, 2016
Opening claim construction submissions [LPR 4.4(a)] (15 days from final claim constructions)	Feb. 4, 2016
Responsive claim construction submissions [LPR 4.4(b)] (30 days from opening claim construction submissions)	Mar. 7, 2016
Disclosure of reliance on advice of counsel [LPR 4.8] (90 days before close of fact discovery)	

Event	Due Date
Joint claim construction and prehearing statements [LPR 4.5] (5 days from responsive claim construction submissions)	Mar. 12, 2016
Claim construction hearing [LPR 4.6]	At the Court's convenience
Plaintiff to serve final infringement contentions [LPR 3.10(b)]	15 days after claim construction hearing pursuant to LPR 4.6
Close of fact discovery [LPR 4.7]	30 days after claim construction hearing pursuant to LPR 4.6
Defendant to serve final non-infringement contentions and final invalidity and unenforceability contentions [LPR 3.10(c)]	30 days after claim construction hearing pursuant to LPR 4.6
Post-claim construction status conference [LPR 4.7]	Within 30 days of claim construction hearing pursuant to LPR 4.6 at the Court's convenience
Plaintiff to serve final validity and enforceability contentions [LPR 3.10(d)]	45 days after claim construction hearing pursuant to LPR 4.6
Exchange of opening expert reports [LPR 5.1(b)]	60 days after issuance of the Court's claim construction ruling
Exchange of responsive expert reports [LPR 5.1(c)]	30 days after exchange of opening expert reports pursuant to LPR 5.1(b)
Completion of expert discovery [LPR 5.2]	40 days after exchange of responsive expert reports pursuant to LPR 5.1(c)
Deadline for dispositive motions	10 days after completion of expert discovery pursuant to LPR 5.2
Trial	At the Court's convenience

b. The parties do not advocate a departure from the Local Patent Rules.

4. Anticipated Motions:

a. The parties anticipate filing the following motions:

i. Preliminary Injunction: No.

ii. Motion to add or substitute parties: No.

iii. Other:

b. The following issues may be the proper subject of an early motion for summary judgment or partial summary adjudication:

i. Inventorship or Indefiniteness: If Plaintiff fails to correct inventorship of the ‘529 Patent to add Siddharth Modi, Defendant will file an early summary judgment motion on the invalidity of the ‘529 Patent.

Plaintiff’s response: Failure to list an inventor is only an issue in the event that it was done for purposes of deception. Here, Plaintiff does not think that Siddarth Modi is an inventor of the ‘529. However, in any event, Plaintiff can obtain a contingent assignment from Mr. Modi indicating that while he does not believe he is a coinventor, he has assigned and does assign whatever ownership he has, if any, to Plaintiff, and that any correction was by mistake.

ii. Invalidating sales, offer for sale, or display: No.

iii. Noninfringement, and in the alternative, Invalidity: Defendant will file an early summary judgment motion of noninfringement of the ‘529 Patent as the accused product does not contain a cover having a “second sidewall” as required by all the claims. In the alternative, if the ‘529 Patent is so broadly construed to cover the accused device, Defendant requests summary judgment of invalidity as such a broad interpretation reads on the prior art (namely Chinese Patent Application no.: 94206452.6 to Wang, Guoquan).

Plaintiff’s response: Early claim construction on merely a portion of claim terms is inappropriate. It is important in claim construction to take terms in light of the specification and as they would be understood by a person having ordinary skill in the relevant art, i.e. extrinsic evidence and fact witnesses, as well as expert witnesses. Further, the prior art must be considered, with the most important prior art to be considered here being those parent applications upon which the patent in question is derived. To attempt to "construe" one term in isolation, without the benefit of this pool of evidence from which the construction naturally flows, is not only flawed but inevitably a waste of time and resources that would inevitably lead to an appeal by one party or the other.

5. Nature of Dispute:

a. Describe the field of the claimed invention: Plaintiff asserts the field of the invention is pet feeding bowls. However, Defendant assert that the claims are not so limited and can encompass any bowl or basin having the structural limitations recited in the claims (e.g., Defendant does not believe the claims are limited just to animal feeding bowls as the recitation of “an animal feeding or drinking container” is only found in the preamble of the claims, and is not a claim limitation).

b. Claims asserted: Plaintiff alleges that the Defendant, Loving Pets, Corp., Accused Instrumentality infringes Claims 1, 2, 3, 4, 5, 6, 8, 10, 11, 12, 13, 14, 15, and 16 of U.S. Patent 8,973,529 (the ‘529 patent).

c. Plaintiff anticipates requesting that the Court construe probably most if not all claim terms.

Defendant disagrees and anticipates requesting the construction of a small handful of claim terms (e.g., anywhere between 3-10 claim terms, at most). However, for the early summary judgment of noninfringement Defendant plans to file (as discussed above), Defendant anticipates that only one term need be construed – “sidewall” – the definition of which can be decided on by the briefs of the parties.

Plaintiff’s response: Construing “sidewall” cannot only be done on briefs. The specifications in the ‘529 identify “sidewall” as item 52, but "second" sidewall is implied as the edge of specifications 64-66, i.e., the sidewall of the rubber edge. Evidence from witnesses and experts is required to explain this adequately to the Court.

d. Describe the allegedly infringing activity or product: Plaintiff alleges that the Defendant, Loving Pets, Corp., has an Accused Instrumentality known as Loving Pets stainless steel Ruff-N-Tuff Pet Feeding Dish.

e. Describe any potentially non-infringing alternative designs: Plaintiff alleges a non-infringing alternative is a pet feeder bowl without rubber on the bottom.

Defendant alleges that a non-infringing design is one that does not have rubber or elastomeric material (or other padding) on the sidewall of the bowl.

f. The parties have not stipulated that the above-described designs do not infringe the patents in issue.

6. Discovery:

a. If the parties anticipate needing to propound interrogatories and/or take depositions in excess of the number provided in the Federal Rules of Civil Procedure, set forth the proposed limit and basis for the request: No.

b. The parties have not agreed to an electronic discovery plan, although the parties have exchanged a proposed plan yet to be approved by both parties.Absent agreement by the parties, the default standard for e-discovery set forth in Appendix K to the Local Rules applies.

c. The parties anticipate the following discovery issues: None at this time.

7. Protective Order.

a. The parties have agreed to the form Patent Protective Order set forth in Appendix C to the Local Patent Rules.

b. The parties do not plan to submit an alternative proposed protective order for adoption by the Court.

c. Identify any issues the Court should be aware of with respect to the confidentiality concerns of the parties: None at this time.

8. Claim Construction Hearing. The parties propose the following format for the Claim Construction Hearing:

* As stated above, Defendant does not believe a claim construction hearing is necessary for the early summary judgment motion relating to noninfringement. Defendant believes that the only term necessary to construe is “sidewall” which can be done on the summary judgment briefs.

Plaintiff’s response: As stated above, Plaintiff feels early claim construction in a limited fashion as suggested by Defendant is wholly inappropriate. A full hearing is needed for the Court to understand the intrinsic and extrinsic evidence.

If summary judgment is not granted on this early summary judgment motion, the Defendant suggests a claim construction hearing will be needed as follows:

a. Order of presentation: Brief Opening Statements by Plaintiff, and then by Defendant. Plaintiff to then present its evidence. Plaintiff’s evidence then subject to cross by Defendant. Defendant then to present its evidence. Defendant’s evidence then subject to cross by Plaintiff. Brief Closing Statements by Plaintiff, and then by Defendant.

b. Anticipated number of witnesses: Estimated at 1-4 per side.

c. Anticipated length of hearing: ½ day.

9. The parties have consented, pursuant to Fed. R. Civ. P. 5(b)(2)(E), to the electronic exchange of pleadings, notices, discovery, and other mandated disclosures not otherwise served electronically via the Court’s electronic filing system.

10. The parties have discussed settlement and the appropriateness of Alternative Dispute Resolution. ADR is probably not suitable at this time but may be later in the proceedings.

By: David A. Welling, Esq., Counsel for Plaintiff

Jim Kwak, Esq. and F. Michael Speed, Jr., Esq., Counsel for Defendant

Dated: August 20, 2015

/s/ F. Michael Speed, Jr.

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CERTIFICATE OF SERVICE

I hereby certify that on August 20, 2015, the foregoing was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's Electronic Filing System.

/s/ F. Michael Speed, Jr.
F. Michael Speed, Jr.